

### **REMARKS**

Claims 16-20 and 23-24 are pending in this application. All other once-pending claims have been canceled.

This case was telephonically interviewed. The interview (which took the form of several telephone calls between the undersigned and the Examiner) culminated in a telephone call on June 5, 2006, in which the Examiner agreed to allow claims 16-20 and 23-24 in the form presented in this paper. The section 112 issues raised in the May 2, 2006 office action are now moot in view of the amendments.

#### Interview Summary

During the interview, the section 112 rejections and U.S. Patent No. 6,625,622 (Hendrickson) were discussed. Applicant has pointed out that the range issue raised with respect to claim 20 has been addressed with reference to MPEP 2173.05(c), which makes it clear that a range-related feature of the type in claim 20 is not indefinite. (Additionally, the issue concerning the word "about" has been rendered moot by the non-use of that term in the present form of the claims.

If an interview summary is required under 37 C.F.R. § 1.133(b), applicants submit that the foregoing statement constitutes a full interview summary.

#### Amendment to claim 20

The amendment to claim 20 changes the name of the variable used from "n" to "k". The amendment is made to further point out the subject matter of claim 20, and is not intended to respond to the section 112/MPEP 2173.05(c) point discussed above. No new matter is introduced by the amendment to claim 20.

#### Comments Concerning the Section 112 Issues Relating to the word "about"

The Examiner raised certain issues concerning the word "about", which appeared in prior versions of claims 15 and 16. Claim 15 has been canceled, although its features have been incorporated into independent claims 16, 17, and 23 (and into the dependent claims, by

virtue of dependency). In the current version of the claims, applicants have not used the term “about”, although the following is noted:

The term “about” has been removed from the claims in which it appeared, so that the phrases “in about said first proportion”, “in about said second proportion”, and “about equal” have become “in said first proportion”, “in said second proportion”, and “equal”. It should be noted that the use of the term “about” in the original versions of these claims was harmless but superfluous, since it was merely intended to clarify that none of the claims requires absolute mathematical precision. However, after the term “about” is removed, the claims still do not require absolute mathematical precision. It can be seen from the example at page 13, line 8 through page 14, line 24 of the specification that some rounding may be necessary, since it is not possible to have a fractional portion of a user. Thus, if the throttle is set to 60% but the number of users is 89, then it is not possible to select exactly 60% of the users, since 60% of 89 is 53.4, and it is not possible to select a fractional amount (i.e., 0.4) of a user. So, if the first (or second) proportion is 60% (or 6 out of 10), then selecting either 53 or 54 users would be considered to be a selection of user “in said first [or second] proportion.” Moreover, if 60% (or 6 out of 10) is the “third proportion” and either 53 or 54 users out of 89 are selected, then the number of users selected as compared with the total number of users would be considered to be “equal” to the third proportion. Again, the point is that mathematical precision is not required in order to fall within the claims; this was true when the word “about” was in the claimed, and it continues to be true even after this formal change is made, since the change is of no substantive significance and does not in alter the scope or meaning of the claims. These comments apply not only to claims 15 and 16 (which were the subject of this point in the May 2, 2006 office action), but to all pending claims (which carry some features from claim 15 – either by express incorporation of now-canceled claim 15’s features, or by virtue of dependency).

#### Information Disclosure Statement

The Examiner has returned an initialed copy of the Information Disclosure Statement that was filed June 18, 2004, but has not returned an initialized copy of the IDS that was filed on April 21, 2006. Applicants note that the April 21, 2006 IDS lists two references (Wang and Thomas), of which one reference (Wang) is listed on the Examiner’s Notice of

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References Cited. However, applicants request that in the next action the Examiner return and initial the April 21, 2006 IDS to indicate that all reference cited therein have been considered.


Drawings

The Examiner has not indicated that the formal drawings filed with the application have been accepted. It is respectfully requested that in the next office action the Examiner indicate that the formal drawings have been accepted.

Conclusion

Applicants respectfully submit that this case is in condition for allowance.

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